

Re: Docket 02-278: ACA International's Petition For an Expedited Clarification and Declaratory Ruling

To: The Honorable Federal Communications Commission Commissioners

The Petition For an Expedited Clarification and Declaratory Ruling should be **denied**.

Petitioner does not require any clarification, and the means to solve the problems presented by Petitioner are already available to the companies who claim they need clarification.

The statute at 47 USC 227(b)(1)(A) forbids calls to numbers in an enumerated list if the call does not have prior express permission and which is either placed by an automated dialer **or** contains a message delivered with a recorded or artificial voice. This list includes calls to numbers for which a consumer is charged and includes cellular or other wireless telephones.

This means, absent prior express permission, that no call made by an autodialer or call using a prerecorded or artificial voice may be made to a number for which the consumer is charged. It should be noted that the prohibition on calls to cell phones at 47 USC 227(b)(1)(A) contains an '**or**', not an '**and**'. That means that if either of the conditions are met, and no prior express permission exists, the call is prohibited. Thus it doesn't matter whether the equipment is not automated per the definition, the message is a prerecorded or artificial voice. The statute makes no references to solicitations, unsolicited advertisements, established business relationships or telemarketing calls in that paragraph. The FCC has no authority to grant a clarification permitting any company to make calls using an automatic telephone dialing system **or** using an artificial or prerecorded voice to numbers of wireless telephones or for any call for which a consumer is charged if prior express consent has not been given.

Petitioner's claim that calls are not random or sequential does not make sense. The definition of sequential means one after the other in a list. It does not mean dial number and increment by one. Incrementing by one is one of many ways to form a list. One can increment by two. Incrementation need not be involved. Lists may be ordered in many different ways, by name, by number, or a host of different ways, but records are accessed one at a time going to the next record in the sequence. Hence **SEQUENTIAL**. The real issue is that a machine has been programmed to make calls in some orderly way which does not involve repetition of any of the numbers called. Randomly selected numbers from a list are still called sequentially since once the

number is called, the number is discarded from the list and the machine calls the next number generated until all numbers have been called. The record of the calls shows the **sequence** in which they were called. The sequence may or may not be in numerical telephone number order. Petitioner is engaging in semantic arguments and splitting hairs over nonexistent differences.

If the FCC desires to make a declaratory ruling, let it be that prior express consent be shown by some contract which specifies the number attached to the account which may be called. Businesses are already capable of doing this and need no FCC guidance on the subject. Furthermore, Petitioner should be admonished that the harms they perceive as a result of what they consider lack of clarity in the existing regulations and the various memos and orders are a result of their member businesses extending credit when credit should not be extended, and then billing everybody else when it doesn't work out. Their members are flat out greedy and want to take a risk at everybody else's expense.

Petitioner also has other fallacies. Calls for collection **do** invade privacy of consumers, for not all people who answer the telephone are the target of said collections, and this is very bothersome. Especially when the calls are made repeatedly. Furthermore, collections done with automated calls get people drawn to the telephone only to find out that there frequently is no real person there to talk to them. Since people or entities involved in collections do not identify themselves nor discuss what the call is about, the calls can be ominous or threatening. Again, Petitioner should be admonished to tell its members to quit extending credit where credit shouldn't be extended. Consumers shouldn't be made to handle what the creditors failed to do properly in the first place.

Consumers would like to know why creditors are lending credit to people who have no track record or permanent abode or means of communication. If they are having problems collecting, it is **their** problem. The ACA itself admits (page 8 of petition, bottom) that the problems are with accounts primarily where creditors have offered credit to those least likely to be responsible for it. This sounds greedy to me. At page 9 paragraph one, if the folks who aren't paying are inflicting a cost on other Americans, then they should be prohibited from having credit to abuse. Allowing the ACA membership to abuse folks who are not responsible for the debt is not the answer.

The clarification would not be necessary if creditors were going to stick to calling people whose specific number is tied to the account. This petition has the feel of a hidden agenda. That agenda might be that once they get a favorable ruling, they would start making calls to folks with the same last

name or otherwise randomly calling people without having a real number at which to expect their debtor. Any exemption of collection calls should be firmly attached to a specific number at which the creditor had a demonstrable reason to believe the debtor was at. Calling everybody with the same last name does not accomplish that and should be prohibited. Such calls would be a clear violation of privacy rights which are not subject to exemption via 47 USC 227(b)(2)(B)(ii)(I). If they have no demonstrable reason to call a number, they should not be calling it. Any number called should have been given to the creditor previously by the debtor. Guessing is not reasonable.

Calls that notify of product arrival or books available at libraries are all examples where prior consent is at work. In each of these cases a consumer expects to be called, and indeed **wants** the call. Consumers **ASK** for the notification on products they wanted that were not in stock or library books that had not yet been returned. The statute already handles this situation quite nicely.

If there are bills due, then the company for which the bill is payable can easily make express consent a part of their contract and specify the telephone number for which the contact is permissible. Calls for which express consent has already been given need no clarification.

As for comments by members of congress, that is all they are: comments. What counts is what actually passed. Members of congress have been known to make all kinds of statements, a good number of which are dubious at best.

In summary, the Petition should be denied because the statute allows no exemption for automated calls or calls which use a prerecorded or artificial voice to cell phones. Any clarification at all should specify that any number called has previously been give to them by the debtor and that guessing or using something as general as a last name is not sufficient. Petitioner may get its desires by communicating to its members that there are other ways to solve the problems they experience with collections, in particular poor judgment to whom they grant credit. Their own members have created the problem, and should be the ideal folks to solve it.

Thanks for your kind consideration,

Jeffrey J. Mitchell